

MEMORANDUM

DATE: 05/03/06

TO: POWTS Plan Reviewers
Wastewater Specialists
County Code Administrators
Interested Parties

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SUBJECT: Act 347 (AB-449) Analysis

2005 Wisconsin Act 347 became law on April 29, 2006. This legislation is the result of the work of the Special Committee on Septage Disposal which concluded with the introduction of Assembly Bill 449.

The department has completed an initial review of Act 347. The majority of this legislation is related to activities regulated by the Department of Natural Resources. The analysis that follows covers sections of the Act that address activities regulated by the Department of Commerce.

Prefatory Note Maintenance of private sewage systems – The Act contains a prefatory note that informs readers of the intent of the legislation that was adopted. The paragraph in this note that addresses Commerce activities makes it clear that under general authority to regulate private sewage systems (aka POWTS), the department has promulgated rules (Subchapter V, Comm 83), that include maintenance requirements for all POWTS. Chapter 145, Wis. Stats., has been amended to move the county maintenance program that was previously in the Wisconsin Fund portion of the statute to the list of general governmental unit responsibilities. The intent is to have all POWTS, not just those permitted by counties after they joined the Wisconsin Fund program, included in a maintenance program at the governmental unit level.

Section 11 This section represents a re-numbering of statute references due to changes made via the Act.

Section 12 This section adds the “duty” of adopting and enforcing a maintenance program to the current list of general governmental unit (county) duties found in s. 145.20(2), Wis. Stats.

Section 13 *Note: There is no Section 13 in Act 347.* In early drafts of AB 449, Section 13 contained “local assistance programs” language. This section was removed as substitute amendments were offered and accepted by the legislative committees charged with review of the bill.

Section 14 This section is the most critical in terms of the department's (and county's) responsibilities relative to the POWTS program. As stated earlier, the legislative intent is to have all POWTS placed into a maintenance program at the county level. The language directs the department to identify what POWTS should be covered under a maintenance program and when these provisions should apply. Section Comm 83.52, Wis. Adm. Code, already addresses this matter by listing the maintenance provisions for new and existing POWTS. The language in Section 14 allows the department to determine which POWTS are included in a maintenance program in counties that did not participate in the Wisconsin Fund program at the time Act 347 was implemented. Section Comm 83.52, Wis. Adm. Code, includes this information. Additional language in Section 14 directs the department to list which individuals may perform inspection, maintenance or servicing of POWTS. Again, s. Comm 83.52, Wis. Adm. Code, already contains this information.

Since the July, 2000 revision to chapter Comm 83, Wis. Adm. Code, the department has employed a strategy of promoting the code requirements for POWTS maintenance and encouraging the counties to implement a new or upgrade an existing maintenance reporting program. Most counties do have some form of maintenance reporting in place. A number have upgraded their in-house programs or have developed or contracted to implement a maintenance reporting process.

The department intends to meet with POWTS program practitioners in the near future to discuss their data collection needs and strategies that will lead to full implementation of a maintenance reporting program as identified in Act 347.

Section 15 This section revises a statute number reference to reflect the movement of the maintenance program responsibilities from the Wisconsin Fund portion of the statutes to the general county responsibilities section. Maintenance is still required by statute provisions that reference the Wisconsin Fund Program. What is considered acceptable maintenance has been moved from s. 145.245(9)(a), Wis. Stats., to newly created s. 145.20(5), Wis. Stats., and s. 145.245(9)(a), Wis. Stats., has been amended to reflect the new reference.

In summary, Act 347 includes changes to Commerce and DNR statutes. The sections listed above represent the provisions in Act 347 that will affect Commerce and the counties regarding POWTS program activities.

Most of the direction given to the department in Act 347 regarding maintenance simply re-enforces what is already in chapter Comm 83, Wis. Adm. Code. The department intends to discuss certain maintenance reporting issues such as a timeline for full implementation with affected parties before making any further decisions.